

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JESUS HERNANDEZ,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

Case No: C 14-2662 SBA

2255 MOT. – See CR 08-556 SBA

**ORDER DENYING MOTION
UNDER 28 U.S.C. § 2255**

Pursuant to a written plea agreement, Petitioner pled guilty to one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 924(g)(1). Dkt. 44. On February 5, 2013, the Court sentenced Petitioner to forty-seven months in the custody of the Bureau of Prisons. Dkt. 43. Judgment was entered on February 7, 2013. Dkt. 46.

On June 9, 2014, Petitioner filed the instant pro se motion challenging his sentence, pursuant to 28 U.S.C. § 2255. Dkt. 48. As the basis for said motion, Petitioner alleges as follows: “I have only just learned of federal law to allow me to apply for citizenship in the United States of America. As a citizen, a re-entry change and sentence would need correction! I wish to apply at this time.”


Petitioner’s motion is without merit. First, Petitioner’s motion is untimely because it was filed more than one year after the entry of final judgment, and no factual basis for equitable tolling is alleged or otherwise apparent from the record. See 28 U.S.C. § 2255(f). Second, under the terms of Petitioner’s plea agreement, Petitioner agreed to waive “any collateral attack on [his] conviction or sentence under 28 U.S.C. § 2255 . . . except for a claim that [his] constitutional right to effective assistance of counsel was violated.” Dkt. 44

¶ 5. Nowhere in his motion does Petitioner allege that his counsel was constitutionally ineffective. Finally, Petitioner's assertions regarding his purported ability to apply for citizenship bear no relation to the underlying charge of being a felon in possession of a firearm. Accordingly,

IT IS HEREBY ORDERED THAT Petitioner's motion under 28 U.S.C. § 2255 is DENIED. Because no reasonable jurist would find the denial of the instant motion debatable or wrong, the Court declines to issue a certificate of appealability. The Clerk shall terminate Docket 48 in CR 08-00556 SBA and close case no. C 14-2662 SBA.

IT IS SO ORDERED.

Dated: June 16, 2014


SAUNDRA BROWN ARMSTRONG
United States District Judge